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Contents

1. Proposed rule pushes BLM requirements to July 2019
2. 2nd Republican governor questions Zinke plan revisions
3. Review unlikely to spur oil and gas rush
4. Grijalva bashes review as Zinke neighbors post signs
5. Researchers probe wildlife refuge oil reserves
6. Flaring mine could offer Calif. carbon credits
7. Presidential limits: Trump can't come through for coal
8. Trump touts cleaning of coal as Murray battle heats up
9. The long (long) road to a famous dead end
10. Trump stokes fears of government shutdown
11. Government again fails to win convictions
12. Roosevelt IV says Zinke hasn't lived up to Teddy's legacy
13. Timber plan reignites battle over spotted owl

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Pamela King, E&E News reporter

Published: Wednesday, August 23, 2017

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<http://bit.ly/2wEGFw6>

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<http://bit.ly/2g6bung>

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<http://bit.ly/2g5YmPg>

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7. Presidential limits: Trump can't come through for coal

Peter Behr and Saqib Rahim, E&E News reporters

Published: Wednesday, August 23, 2017

"Tell Cohn to do whatever these two want him to do." This secondhand account of President Trump's directions on rescuing Ohio power utility FirstEnergy Corp. and its coal supplier, Murray Energy Corp., sounded like a boss talking. As president, it didn't work.

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8. Trump touts cleaning of coal as Murray battle heats up

Hannah Northey and Dylan Brown, E&E News reporters

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President Trump made puzzling remarks praising the cleaning of coal last night even as a major coal company warned it is heading toward bankruptcy.

<http://bit.ly/2vgdgVS>

9. The long (long) road to a famous dead end

The Bureau of Land Management's official visitors guide paints an ominous picture of travel on the remote Dalton Highway.

<http://bit.ly/2woIFJj>

10. Trump stokes fears of government shutdown

Geof Koss, E&E News reporter

Published: Wednesday, August 23, 2017

President Trump's stated willingness to shut down the federal government over funding for his border wall with Mexico is adding a new layer of pressure on lawmakers, who already face a tangle of difficult budget and spending deadlines when they return to the Capitol next month.

<http://bit.ly/2wyNf8p>

11. Government again fails to win convictions

Jennifer Yachnin, E&E News reporter

Published: Wednesday, August 23, 2017

Federal prosecutors yesterday suffered another stunning setback in their attempts to convict participants in the armed standoff between ranchers and federal agents near Bunkerville, Nev., when jurors failed to return a single guilty verdict in the retrial of four men who took part in the 2014 event.

<http://bit.ly/2wFOAJF>

12. Roosevelt IV says Zinke hasn't lived up to Teddy's legacy

Jennifer Yachnin, E&E News reporter

Published: Wednesday, August 23, 2017

Interior Secretary Ryan Zinke regularly touts his admiration of Theodore Roosevelt, but the conservationist president's great-grandson yesterday said Zinke's actions have failed to match his rhetoric.

<http://bit.ly/2vZ5yCl>

13. Timber plan reignites battle over spotted owl

Michael Doyle, E&E News reporter

Published: Wednesday, August 23, 2017

California's loggers and environmentalists will again face off over northern spotted owl protections, as timber giant Sierra Pacific Industries tries to craft a plan that would allow intrusions on the federally protected bird's forest habitat.

<http://bit.ly/2vZ6QwU>

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Meredith C. Black

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Contents

1. Proposed rule pushes BLM requirements to July 2019	1
2. 2nd Republican governor questions Zinke plan revisions	2
3. Review unlikely to spur oil and gas rush	3
Monuments review	5
4. Grijalva bashes review as Zinke neighbors post signs.....	6
Neighbors' yard signs	7
5. Researchers probe wildlife refuge oil reserves	7
6. Flaring mine could offer Calif. carbon credits.....	8
7. Presidential limits: Trump can't come through for coal.....	8
8. Trump touts cleaning of coal as Murray battle heats up.....	10
Murray fight.....	10
9. The long (long) road to a famous dead end	11
Paralleling the pipeline.....	12
Spot the tourist (it's easy).....	13
What's in a name?	14
Getting warmer	15
Work camps transformed	17
Pass carefully and watch for wolves	18
Bridging the Yukon.....	20
10. Trump stokes fears of government shutdown.....	21
11. Government again fails to win convictions.....	23
Restitution for Malheur	24
12. Roosevelt IV says Zinke hasn't lived up to Teddy's legacy	24
13. Timber plan reignites battle over spotted owl	26

1. Proposed rule pushes BLM requirements to July 2019

Pamela King, E&E News reporter

Published: Wednesday, August 23, 2017

Federal lands regulators last week offered the Office of Management and Budget a proposal for rolling back Obama-era requirements to limit methane releases from oil and gas operations on public lands.

In a notice received by OMB last weekend, the Bureau of Land Management announced its proposed rule to suspend certain requirements under the Methane and Waste Prevention Rule. The final rule was published in the *Federal Register* on Nov. 18 and went into effect Jan. 17.

After a failed attempt in May to kill the regulation under the Congressional Review Act (CRA), BLM announced it would delay compliance with deadlines that had not yet taken effect (Greenwire, June 14). In a motion filed the following week, Justice Department attorneys indicated that BLM would propose to suspend the rule's remaining provisions (Energywire, June 22).

BLM's new proposed rule appears to pause all of the final rule's provisions until July 17, 2019.

Interior Secretary Ryan Zinke has said he intends to rewrite the rule, which may have been prohibited had the CRA effort been successful (Energywire, June 21).

BLM's rollback of the methane rule is part of Interior's effort to align with President Trump's "energy independence" executive order.

"The delays and suspensions are consistent with the President's March 28, 2017, Executive Order on Promoting Energy Independence and Economic Growth and its requirement that the BLM review the previous, related final rule to determine whether revisions, rescissions, or suspensions are appropriate," BLM wrote to OMB.

One of the groups suing BLM for delaying the existing methane rule said the administration should heed the lessons of multiple unsuccessful efforts to scrap the regulation.

"Many of the provisions in the rule are already working in key Western states like Colorado and Wyoming," said Jon Goldstein, director of regulatory and legislative affairs for the Environmental Defense Fund. "It's a commonsense measure that reduces waste and helps clean up the air."

If a delay is finalized, that would also be subject to legal review, Goldstein added.

<http://bit.ly/2wEGFw6>

2. 2nd Republican governor questions Zinke plan revisions

Scott Streater, E&E News reporter

Published: Wednesday, August 23, 2017

Nevada Gov. Brian Sandoval (R) has joined a growing chorus of government officials concerned about proposed changes to Obama-era greater sage grouse conservation plans that move away from habitat conservation and instead focus on state-by-state population goals.

Sandoval's office said in a statement to E&E News that the governor does not agree with focusing on population targets, as suggested by a review team of federal officials that was directed by Interior Secretary Ryan Zinke in June to evaluate the federal plans and suggest areas where changes are needed.

The review team report, sent to Zinke on Aug. 4, suggests moving away from focusing on habitat protection and instead allowing states to develop "appropriate population objectives" for complying with the plans.

"Governor Sandoval does not agree with managing the bird by population objectives as defined by the Secretary. He continues to believe that habitat must be managed properly in order to increase numbers and conserve habitat," said the statement from Mari St. Martin, the governor's communications director.

Sandoval joins Wyoming Gov. Matt Mead (R), who earlier this month issued a statement saying he was "concerned" about moving away from the habitat conservation focus in the Obama-era plans (*Greenwire*, Aug. 8).

Mead, like Sandoval, thanked Zinke and the Interior Department for making "an earnest effort to collaborate with the states during the sage-grouse management review." But Mead said in his statement that Wyoming will continue to rely on its core sage grouse area strategy, developed in 2008, which focuses on habitat protection.

"While DOI identifies numerous ways to improve federal plans, I am concerned that the recommendations place more focus on population targets and captive breeding," Mead said. Identifying and protecting prime sage grouse habitat provides "certainty" to the oil and gas and coal mining industries in the Cowboy State, he said.

"Industry needs predictability, but the report does not explain fully how population targets provide that certainty," he said. "Wyoming will continue to rely on science and scientists to manage the species. I will continue to work with Secretary Zinke, state and local stakeholders on this issue."

The governors' concern about shifting away from habitat conservation is shared by the Western Association of Fish and Wildlife Agencies, which last month issued a white paper that concluded prioritizing state-by-state population goals without including "habitat management and restoration" could harm the bird and many other sagebrush-dependent species (*Greenwire*, July 31).

That white paper also reported that it could take two to three years to develop a suitable method to accurately count sage grouse populations, which are notoriously cyclical and can change dramatically from year to year.

Sandoval, along with Mead and Colorado Gov. John Hickenlooper (D), met with Zinke in Washington in February, and again at the Western Governors' Association annual meeting in June in Whitefish, Mont., to ask that the Interior Department work with the governors on any sage grouse plan revisions.

The review team met with representatives of Western governors and state agencies, as well as the members of a federal-state sage grouse task force, behind closed doors last month in Denver.

"The Secretary agreed to do that and this report is another step in ensuring Nevada has been, and will continue to be engaged in the process to review the 2015 land use plan amendments," the statement from Sandoval's office said.

<http://bit.ly/2g6bunq>

3. Review unlikely to spur oil and gas rush

Pamela King, E&E News reporter

Published: Wednesday, August 23, 2017

Changing or abolishing at least six of the 21 national monuments currently under Interior Department scrutiny could create limited new opportunities for oil and gas operators.

But while unlocking monument-designated lands could offer some potential for new energy activity, it's unlikely that widespread development would erupt on currently protected acres. In southeastern Utah's Bears Ears National Monument, the poster child for Interior's review, there is some potential for oil and gas extraction, but the site is located far from the resource-rich Uinta Basin in the state's northeast corner (*Energywire*, April 13).

In June, Interior Secretary Ryan Zinke advised reducing Bears Ears' size by an unspecified amount ([E&E News PM](#), June 12). Recommendations on the rest of the monuments on his [list](#) are due to the White House tomorrow.

Interior has not said whether fossil fuel development potential is a factor in assessing whether past administrations abused their power under the [Antiquities Act](#). The 1906 law allows presidents to set aside federal lands as monuments.

Zinke has said of his review that there is "no predetermined outcome on any monument."

The industry group Western Energy Alliance said its support of the review has less to do with energy potential on existing monuments and more to do with the harm future designations could cause for its membership.

"By and large, the national monument designations have not affected the oil and natural gas industry," said Western Energy Alliance President Kathleen Sgamma. "There are a few leases in the periphery of Bears Ears far from the cultural resources, but other than that, we have largely dodged a bullet."

"Which is not to say that some future president — such as a President Elizabeth Warren or some other 'keep it in the ground' president — couldn't designate areas with oil and gas potential, and that is why we are focused on the future of the Antiquities Act," Sgamma added.



Secretary Ryan Zinke 
 @SecretaryZinke

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Today I'm recommending no modifications to
Canyons of the Ancients National Monument
[doi.gov/pressreleases/](#) ... via @interior



Monument Review: Secretary Zinke Recommends No Mo...
 Secretary of the Interior Ryan Zinke announced Colorado's Canyons of the Ancients National Monument is no longer under review and that he will recommend that no modifications be ...
[doi.gov](#)

1:04 PM - 21 Jul 2017

@SecretaryZinke/Twitter

Zinke has so far removed six sites from his review, including one monument whose designation is particularly permissive of oil and gas activity within its borders. Whereas other sites allow for existing extraction to continue after monument status is granted, Canyons of the Ancients National Monument remained open to new leasing ([Energywire](#), April 27).

In a July 21 tweet, Zinke announced that no modifications would be made to the Colorado monument.

Environmental groups say they are still puzzling over how Interior is deciding whether to exempt or examine protected sites.

"Given the reality show pageantry surrounding this unwarranted review of our national monuments, a tweet announcing that a place like Canyons of the Ancients is safe this time around offers little assurance," said Greenpeace USA spokeswoman Cassady Craighill.

Following an E&E News analysis exploring which monuments held oil and gas potential, Greenpeace conducted its own investigation and concluded that — in addition to Bears Ears, Canyons of the Ancients, Utah's Grand Staircase-Escalante and Montana's Upper Missouri River Breaks — California's Carrizo Plain and San Gabriel Mountains national monuments could also be ripe for new exploration ([Energywire](#), April 27; [Greenwire](#), May 10).

Zinke has eliminated Upper Missouri River Breaks from his review (*Greenwire*, Aug. 3), but Carrizo Plain and San Gabriel Mountains could still see changes.

"If these national monuments are shrunk or open to development, that certainly puts them at risk of turning into oil and gas fields," Craighill said. "People and elected officials should challenge any changes to these public lands in court to protect these places today and for generations to come."

The Interior Department's review of 21 national monuments includes at least six sites that could yield oil and gas — if their designations are changed and if industry wants to develop them. Monument proclamations generally recognize valid existing mineral rights.

- Bears Ears, Utah
- Grand Staircase Escalante, Utah
- Carrizo Plain, Calif.
- San Gabriel Mountains, Calif.
- Basin and Range, Nev.
- Gold Butte, Nev.

While exploration in Carrizo Plain was largely dormant for years, the monument's 2010 resource management plan notes that "recent advances in technologies (including seismic exploration, drilling, and production technologies), along with significant increases in oil and gas prices, may result in more activity in the future."

Carrizo Plain is especially vulnerable because "there was oil and gas interest there," said Athan Manuel, director of the Sierra Club's lands protection program.

The Center for Biological Diversity has also tracked industry interest in tracts contained within two Nevada monuments: Gold Butte and Basin and Range (*E&E News PM*, Aug. 18).

Even if all the monuments on Zinke's list remained intact, some groups have raised concerns about oil and gas leasing in very close proximity to monuments. The Western Values Project has compiled its own watch list, which includes Canyons of the Ancients, Dinosaur and Hovenweep national monuments.

"It's very clear that Secretary Zinke and this administration is willing to risk just about every national monument under review that has the potential for development at the behest of the fossil fuel industry," said Chris Saeger, executive director of the Western Values Project.

Although no companies in the Independent Petroleum Association of America's membership have specifically expressed a desire to develop inside a monument, spokesman Neal Kirby said improved management of border areas is of particular interest for the trade group.

"We believe it is possible to manage our nation's incredible natural resources and balance the Interior Department's multiple-use mission," Kirby wrote in an email. "There are areas where a national monument area stops and Bureau of Land Management land begins, so there needs to be a transparent process in place for the agency to manage access to lands that are congressionally designated as multiple use."

<http://bit.ly/2g5YmPg>

4. Grijalva bashes review as Zinke neighbors post signs

Jennifer Yachnin, E&E News reporter

Published: Wednesday, August 23, 2017

House Natural Resources Committee ranking member Raúl Grijalva (D-Ariz.) yesterday slammed the Trump administration's ongoing assessment of dozens of national monuments as an "obvious sham," asserting the 3 ½-month review is geared toward opening public lands to energy extraction.

In a 29-page [report](#) published yesterday by the Natural Resources Committee's Democratic lawmakers, Grijalva disputed the Trump administration's criticism that past monument designations have lacked "adequate public outreach."

Interior Secretary Ryan Zinke is set to submit a final report on his review of 27 national monuments tomorrow, all of which have been created since 1996 and all but one of which are larger than 100,000 acres. He has previously announced a half dozen of them will undergo no boundary changes.

But Grijalva, who has been a vocal critic of the review process since President Trump ordered the evaluation in late April, asserted yesterday that its purported focus on public input "is a diversion meant to obscure the review's true aim."

"While the administration has claimed a deep desire to know what the American public thinks about our national monuments as the motivation for its review, there is ample evidence that the real purpose is to satisfy the apparently boundless demand for access to drill and mine on all public lands," Grijalva wrote.

The report goes on to accuse Interior of using a "black box process" for its review, pointing to media reports detailing "the selective meetings he has chosen to take and the brevity of those meetings."

"A review process supposedly intended to include and educate the American public that includes selective, secretive meetings and hides the results of public comments is an obvious sham," Grijalva wrote.

During the review, Zinke has visited eight of the 27 monuments. He has publicly acknowledged the process is not a "deep dive" into each of the sites ([E&E News PM](#), June 22).

An Interior Department spokeswoman dismissed Grijalva's report as a "wild departure from reality" and "campaign literature paid for [by] extreme environmentalists."

"In addition to missing the mark on the point of the monument review — to give local communities a say — the congressman's report also fails to take into account the more than 60 meetings the secretary conducted on the ground with hundreds of local, state, tribal and nongovernmental stakeholders including environmental groups and Democratic members of Congress and state officials," said Interior spokeswoman Heather Swift.

Swift offered a list of meetings and phone calls with various officials, including Maine Sen. Angus King (I) and Oregon Sens. Ron Wyden (D) and Jeff Merkley and Colorado Gov. John Hickenlooper (D) as well as meeting with Nevada Democratic Sen. Catherine Cortez Masto.

"Additionally, the congressman's claim that the review is driven by oil and gas exploration is laughable at best," Swift added. "The review, as was outlined in the executive order and the secretary's repeated statements and interviews on the subject, is about restoring trust and giving rural communities a voice in land management decisions. Locals are concerned about losses in revenue, agriculture, hunting and fishing, private property rights, public access to land, traditional tribal uses of the land, and timber harvesting."

Zinke has previously defended his tours of monuments in Utah and Nevada, arguing that he "shook hands with all sides."

"I've toured millions of acres on foot, rode horses, flew over it multiple times. I've done that all in a few days. I have certainly fulfilled my duty and my mission," Zinke said of his visit to the Bears Ears and Grand Staircase-Escalante national monuments in Utah earlier this year (*Greenwire*, May 11).

Neighbors' yard signs

The Environment America Research and Policy Center has launched its own last-minute campaign to persuade Zinke against shrinking national monuments — but instead of the usual radio or television advertisements, the green group is targeting Zinke via his neighbors on Capitol Hill.

The group has distributed more than 130 yard signs in the Washington neighborhood where Zinke lives. The signs say, "We Love Our Public Lands! Secretary Zinke: Leave Our National Monuments Alone."

"Americans love hiking, camping and fishing in our national monuments and parks, and we want Secretary Zinke to keep our public lands safe from mining and drilling," said EARPC Conservation Outreach Director Christy Leavitt, who lives in the neighborhood.

She added: "We are his neighbors here on Capitol Hill, and what matters most is whether he is going to be a good neighbor and steward to these treasured lands across the country."

<http://bit.ly/2wFM4TV>

5. Researchers probe wildlife refuge oil reserves

Published: Wednesday, August 23, 2017

Federal geologists have started fieldwork around the Alaska coastal plain in order to update the area's petroleum potential.

As President Trump calls for opening up the Arctic National Wildlife Refuge to oil companies, the fieldwork gets a jump-start on Interior Secretary Ryan Zinke's order asking for updated assessments on oil and gas on the refuge.

The fieldwork, which involves collecting oil-soaked rocks, will add to studies by the U.S. Geological Survey. Zinke has also asked for updates on the oil and gas potential of the National Petroleum Reserve in Alaska.

Over the last year, as a part of a project that was already underway before Zinke's order, USGS geologists have collected an "unprecedented" number of oil samples from companies, according to David Houseknecht, project chief for USGS's Energy Resources Program for Alaska.

Analyzing the oil and rock samples as well as seismic data could help researchers predict where oil is trapped underground.

Zinke's May order would "light a fire" to increase agency efforts, Houseknecht said (Alex DeMarban, *Alaska Dispatch News*, Aug. 21). — CS

<http://bit.ly/2vgxiQ3>

6. Flaring mine could offer Calif. carbon credits

Published: Wednesday, August 23, 2017

A Colorado business plans to flare methane that would otherwise seep out of a Utah mine — reducing the amount of greenhouse gases released while creating credits to sell on California's cap-and-trade market.

Global Carbon Strategies Corp. wants to flare 400,000 million British thermal units of methane annually for five years from Utah's recently retired West Ridge coal mine. If it clears regulatory hurdles, it could become the only carbon-offset project that burns a fossil fuel without generating electricity.

The California Air Resources Board included flaring of coal-mine methane in its carbon-offset program over the objections of environmentalists who say that rewards coal companies for doing what they should do anyway.

Under federal safety laws, mine operators can vent methane without penalty because of the explosion hazard it poses.

West Ridge, owned by Murray Energy Corp., is among the West's "gassiest" mines, venting nearly 1 billion cubic feet in 2014, according to federal records (Brian Maffly, *Salt Lake Tribune*, Aug. 21). — AAA

<http://bit.ly/2g4Y3Uy>

7. Presidential limits: Trump can't come through for coal

Peter Behr and Saqib Rahim, E&E News reporters

Published: Wednesday, August 23, 2017

"Tell Cohn to do whatever these two want him to do."

This secondhand account of President Trump's directions on rescuing Ohio power utility FirstEnergy Corp. and its coal supplier, Murray Energy Corp., sounded like a boss talking. As president, it didn't work.

In an Aug. 4 letter obtained by the Associated Press, Robert Murray, chairman and CEO of Murray Energy, described a conversation with the president in which Trump ordered an aide to see that Gary Cohn, director of the White House National Economic Council, gave Murray and Charles Jones, CEO of FirstEnergy "whatever" they were asking for.

As the letter spells out in detail, unchallenged by the White House or Murray's company, Murray pleaded for a federal rescue for the Ohio utility's FirstEnergy Solutions merchant coal-fired generating plants, which stood "on the verge of bankruptcy."

"Their bankruptcy will force Murray Energy Corp. into immediate bankruptcy, promptly terminating our 6,500 coal mining jobs," with devastating losses to those coal communities, Murray said. "This would be a disaster for President Trump and for our coal miners and employees" (*E&E News PM*, Aug. 22).

But Trump could not deliver for the men he called "my coal miners," nor for Murray, one of his most outspoken political supporters. Murray was not one of the corporate CEOs who broke with Trump over the

president's equivocal comments on the violence in Charlottesville, Va. Instead, he was an ally who said he was "praying and pacing the floor" election night, hoping for a Trump victory (*Greenwire*, Feb. 17).

In his letter to Trump White House aide John McEntee III, Murray said he had heard Trump direct Energy Secretary Rick Perry three times to rescue the companies, which sought a federal moratorium on further closings of Ohio coal-fired power plants. Murray quoted Trump saying, "I want this done."

But the only lever available to Perry — an action under Section 202(C) of the Federal Power Act — is restricted to short-term actions in response to emergencies that threaten power grid reliability or power delivery, not the chronic plight of coal plants that cannot compete with turbine generators running on cheap Ohio and Pennsylvania shale gas.

The history of this Power Act provision showed it to be an emergency remedy. Perry had ordered the Grand River Dam Authority in Oklahoma to keep operating a facility in April to provide voltage support for the nearby power grid, until replacement generation was available. It was invoked in 2008 in response to grid damage along the Gulf Coast from Hurricane Ike, in 2005 after Hurricane Rita, in 2003 following a blackout in the Northeast, and in 2000 to deal with the California energy crisis.

DOE spokeswoman Shaylyn Hynes said in a statement to the Associated Press, "We look at the facts of each issue and consider the authorities we have to address them, but with respect to this particular case at this particular time, the White House and the Department of Energy are in agreement that the evidence does not warrant the use of this emergency authority."

Melissa Powers, an associate law professor at Lewis & Clark Law School, said Murray's letter was "self-defeating," considering the help he was asking for.

"A letter that begins with a reference to President Trump telling an agency official to 'do whatever these two [Murray and the FirstEnergy CEO] want him to do' is exactly NOT the letter I would want to rely on in an administrative proceeding," she said. The letter focuses on impacts on the companies, not on grid reliability imperatives, Powers said.

John Moore, director of the Natural Resources Defense Council's Sustainable FERC Project, and NRDC clean energy attorney Miles Farmer commented in a blog that DOE's regulations make clear that the emergency authority is limited to "unexpected inadequate supply of electric energy," such as would be caused by "the unexpected outage of facilities" from events like "weather conditions" or "acts of God."

An emergency order would have had symbolic value at first. But what would be the benefit of ordering coal-fired power plants to keep operating when the administration cannot order utilities to buy their electricity — costing more than competitive power from gas generation?

When Trump ordered help for Murray and the coal industry, he appeared to be "following his instincts," as he said he always liked to do as a boss.

But Trump this week, speaking about Afghanistan, said he realizes that decisions are different "when you sit behind the desk in the Oval Office. In other words, when you're president of the United States."

As he sat behind that same desk, should Trump have been told that Murray's request couldn't be met? Was he improperly briefed? Was he briefed and then ignored aides, or did he make promises he knew he couldn't keep?

<http://bit.ly/2vZfprL>

8. Trump touts cleaning of coal as Murray battle heats up

Hannah Northey and Dylan Brown, E&E News reporters

Published: Wednesday, August 23, 2017

President Trump made puzzling remarks praising the cleaning of coal last night even as a major coal company warned it is heading toward bankruptcy.

"We've ended the war on beautiful, clean coal, and it's just been announced that a second, brand-new coal mine, where they're going to take out clean coal — meaning, they're taking out coal. They're going to clean it — is opening in the state of Pennsylvania," Trump said at a rally in Arizona.

The president was apparently referring to Corsa Coal Corp.'s second small metallurgical coal mine in southwestern Pennsylvania. But his remarks, ostensibly about the standard practice of washing coal to remove impurities, triggered jeers on Twitter.

"I've been wondering if Trump actually knows what clean coal technology is. Now I know. He doesn't," tweeted David Lauter, Washington bureau chief for the *Los Angeles Times*.

Trump has never explained what he means by "clean coal." The term often refers to carbon capture and sequestration, but the Trump administration has proposed gutting federal research on the fledgling technology (*E&E Daily*, May 24).

Industry uses "clean coal" to tout the pollution reductions at coal-fired power plants in recent decades as a way to bolster its case for preserving the nation's coal fleet.

But Trump has not yet heeded calls for drastic federal intervention to keep coal plants open, including Peabody Energy Corp. CEO Glenn Kellow's call for a two-year moratorium on coal plant closures in the name of grid security.

Murray fight

The president's comments yesterday coincided with an Associated Press report that the White House rejected pleas from Murray Energy Corp. to save the coal company run by Trump's "guy," Robert Murray, from bankruptcy (*E&E News PM*, Aug. 22).

In a series of letters first obtained by the AP, Murray Energy said unless the Department of Energy invokes its emergency authority under Section 202(c) of the Federal Power Act, coal plants that burn Murray coal will go bankrupt and, as a result, Murray will declare bankruptcy in October.

In an Aug. 18 letter, Murray Energy Chief Financial Officer Robert Moore said it was the only option, "very frankly" ruling out more executive orders or increased thermal coal exports, citing foreign competition and the economics of reaching ports.

Murray Energy noted in the letters White House lawyers' trepidation that such an action would be quickly overturned in court — a concern not shared by Murray Energy attorneys.

"They feel there is a 95% success rate that this will not be overturned by the courts," Murray Energy stated. "If it is not enacted there is a 100% chance that these jobs will be lost."

Ari Peskoe, senior fellow in electricity law at Harvard Law School's Environmental Policy Initiative, said DOE has used its emergency authority only in short-term crises. Murray's lawyers, he said, were likely "blowing smoke" to have such a high level of confidence.

Peskoe said there's no precedent that would support Murray's conclusion.

"It's just never been used for this sort of sweeping program targeted at one specific type of fuel; there's just no precedent for that," Peskoe said. "So how they could come up with a 95 percent confidence is just beyond me."

The authority, Peskoe said, has been used only when DOE addressed short-term emergencies like the California energy crisis, a downed transmission line, a hurricane or other isolated reliability events. Peskoe said the courts weighed in in the 1970s when regulators were discussing the possibility of oil and gas shortages and ultimately decided the law should be used only during emergencies.

Peskoe said Murray's conclusion doesn't satisfy the Federal Power Act's requirement for a spike in demand or a dearth in supply, noting that areas like the Midwest and Mid-Atlantic are instead flush with capacity and seeing low power prices.

"You need facts to support there's a shortage," he said. "There's no legal basis and no factual basis for their conclusion."

<http://bit.ly/2vgdgVS>

9. The long (long) road to a famous dead end

Margaret Kriz Hobson, E&E News reporter Published: Wednesday, August 23, 2017

Editors' note: In late June, E&E News Alaska reporter Margaret Kriz Hobson and her husband, Hugh, made a round trip journey up the Dalton Highway, which shadows the Trans Alaska Pipeline System from Fairbanks to Deadhorse, Alaska. The following is a travelogue of their trip.

Fourth in a series. Read part one [here](#), part two [here](#) and part three [here](#).

DEADHORSE, Alaska — The Bureau of Land Management's official visitors guide paints an ominous picture of travel on the remote Dalton Highway.

"The road is narrow, has soft shoulders, high embankments, and steep hills," the guide says. "There are lengthy stretches of gravel surface with sharp rocks, potholes, washboard, and, depending on the weather, clouds of dust or slick mud."

"Watch out for dangerous curves and loose gravel ... you may encounter snow and ice north of Coldfoot any month of the year," it continues. "Expect and prepare for all conditions."

All true. And in late June, as we drove up the highway from Fairbanks, we followed BLM's recommendations by packing extra gasoline, two spare tires, enough food for a week, fleece, camping gear, a CB radio, bear spray and insect repellent. And we accepted the fact that our windshield was certain to be cracked by rocks hurled into the air by the tires of passing 18-wheelers.

Happily none of that, except for the bug spray, was necessary, and the windshield remained unscathed. My husband commented that the highway reminded him of the country roads of his youth, only better maintained.

The James W. Dalton Highway is a two-lane, 414-mile road built in 1974 after ARCO and Humble Oil & Refining Co. discovered the largest oil field in North America in the middle of Alaska's inaccessible North Slope. The highway, also known as the haul road, provided an essential land link allowing the companies to transport fuel, food and equipment to the Prudhoe Bay oil facility. To the American public, the Dalton

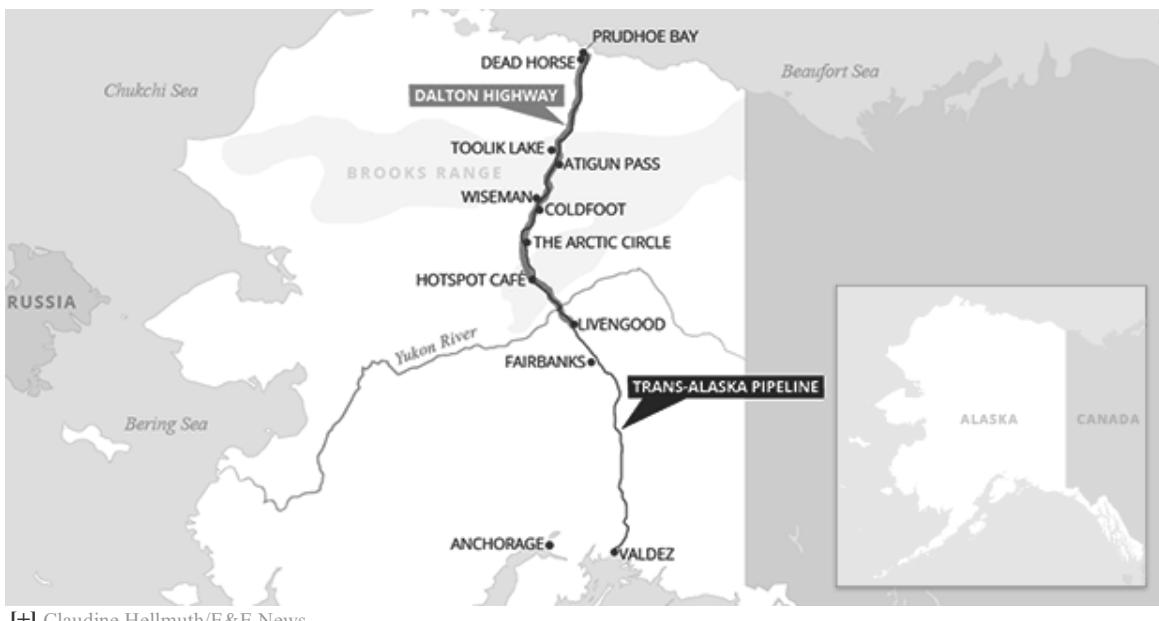
Highway is perhaps best known as one of the dangerous Arctic roads featured on the TV show "Ice Road Truckers."

Forty years ago this summer, oil began flowing down the 800-mile Trans-Alaska Pipeline System (TAPS), from Alaska's Arctic plains to a marine export terminal in Valdez.

Over the years, the all-gravel Dalton Highway has been partially paved and greatly improved. But it remains the only land connection between Alaska's prodigious oil region and the rest of the state's meager road system.

In the summer, the road can be hot and dusty as speeding trucks kick up curtains of finely ground gravel. In the winter, blowing snow can produce treacherous whiteouts on the tundra, making the road icy and all but invisible.

Paralleling the pipeline



[+] Claudine Hellmuth/E&E News

The highway begins 70 miles north of Fairbanks, near the former mining camp of Livengood. It tracks north through Alaska's boreal forestlands, crossing the Arctic Circle and Yukon River.

After passing through the state's historic gold rush region, the road reaches the majestic, snow-covered mountains of the Brooks Range. There, the highway climbs up the steep Atigun Pass before descending into the North Slope tundra.

Then, for about 25 miles, the road passes through a narrow corridor of BLM land that separates the Arctic National Wildlife Refuge on the east from the Gates of the Arctic National Park and Reserve on the west.

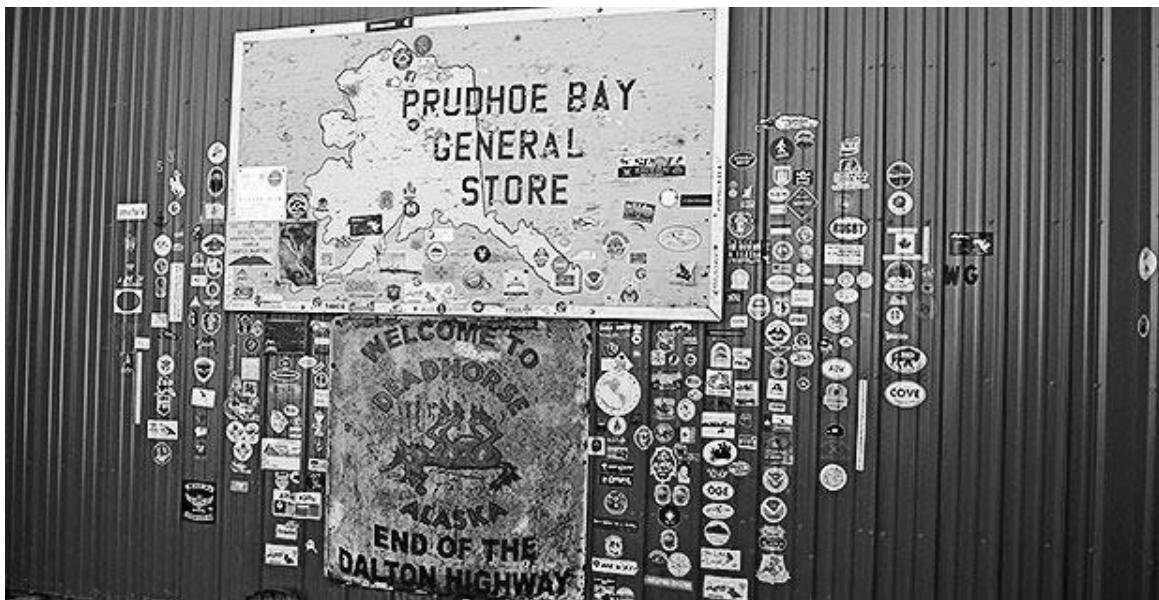
Once past the Brooks Range, the Dalton Highway crosses a seemingly endless stretch of flat tundra and abruptly ends 6 miles south of the Arctic Ocean in Deadhorse.

The highway generally parallels the northern half of the Alaska pipeline, which is usually propped up above Alaska's permafrost-laden northern lands. About half of the 800-mile pipeline was built aboveground.

But in some places along the Dalton Highway, the pipeline disappears into the ground. At the region's highest mountains, for example, TAPS is buried to prevent avalanche damage.

At the Yukon River, the pipeline is attached to the side of the bridge. The silver ribbon of pipe curves over and around hillsides and under bridges. On some parts of the tundra, the pipeline is raised high above the ground to allow caribou to freely migrate across their northern range.

Spot the tourist (it's easy)



The Prudhoe Bay General Store, the only place in Deadhorse to buy souvenirs and snacks. Margaret Kriz Hobson/E&E News

Like many tourists driving up the Dalton Highway, our ultimate destination was a speck of civilization called Deadhorse — America's northernmost dead-end destination. From Livengood to Deadhorse, there are no side roads off the highway.

The only people in the North Slope town are oil industry workers, truckers hauling cargo from Fairbanks and curious travelers who stay long enough to take a guided bus tour to the Arctic Ocean before heading south back down the highway.



In grimy Deadhorse, hotels urge guests to cover their work boots to keep the carpets clean. Margaret Kriz Hobson/E&E News
 The town has a wind-whipped, gritty, isolated ambience that's not to everyone's tastes. The British tabloid the *Daily Mail* once referred to Deadhorse as "a godforsaken community on the edge of the Arctic Ocean where there are no bars, no restaurants, no bank or police force and just a single shop."

At the Aurora Hotel where we stayed in Deadhorse, the cafeteria-style dining room opens for breakfast at 4:30 a.m. Alaska Daylight Time to serve the first shift of oil industry workers required to be on-site by 6 a.m. By 8 a.m., the Aurora dining room is nearly empty, except for the few stragglers talking over coffee.

Deadhorse has no grocery stores or restaurants. But for the cost of a room, hotels provide endless quantities of tasty food at mealtimes and easy access to snacks in between. They also offer free self-serve laundry facilities and even supply the detergent and dryer sheets.

A tub of blue plastic booties sits at the front door of each housing camp with a sign urging everyone to cover their muddy work boots to help keep the hallways clean. A note taped to the wall warns that a grizzly bear was recently sighted rummaging through a nearby dumpster.

When I walked in the door, the Aurora Hotel desk clerk immediately sized me up as a tourist. She took out a town map and circled the only sites likely to be important to me during my stay: two gas stations and a general store, which, she explained, was the only place in town to buy souvenirs.

What's in a name?



Musk ox lumber along the Alaska pipeline. Margaret Kriz Hobson/E&E News

The names Deadhorse and Prudhoe Bay are often used interchangeably to refer to the North Slope industrial site that emerged in the years after ARCO and Humble Oil discovered the giant Prudhoe Bay oil field.

The difference between the two sites emerged as the oil companies built an extensive petroleum processing facility at their well site. Soon industry contractors began setting up offices in Deadhorse to provide field services and equipment.

Today the Prudhoe Bay complex is locked behind security gates and accessible only by permission of BP, which manages the site. Behind the fence, the complex includes six camps with a total of 1,700 beds. BP

provides 50,000 meals each week and washes 23 tons of laundry. Company officials report that Prudhoe Bay workers drink at least 7,000 cups of coffee each day.

By contrast, the unincorporated town of Deadhorse lies just outside the fenced-in Prudhoe Bay oil production facility. Deadhorse is raw oil country, Alaska-style.

The town is packed with trucks, oil rigs, housing trailers, portable field lights and any other piece of equipment that an oil extraction operation might need in the remote Arctic. The area looks like a heavy equipment terminal with a few roads strategically placed to separate the industrial lots from the tundra lakes. Visitors stay in modest booze-free hotels or bare-bones work camps constructed from metal trailers, known as ATCO units.

Although the name of the town is the subject of lively speculation, Deadhorse was most likely named after the Dead Horse gravel-hauling company, which helped build the local airport. How that company came up with the name remains unknown.

In this Land of the Midnight Sun, the sun never dips below the horizon for 67 days each summer. During the winter, Deadhorse goes 55 days without sunshine.

But in late June, the temperature in Deadhorse falls into the low 30s at night. By noon, as we headed south down the Dalton Highway, the air had warmed to 50 degrees Fahrenheit.

In other years, the slope has been known to get 2 feet of snow in July. The coldest temperature ever recorded in Deadhorse was minus 62 degrees Fahrenheit in January 1989.

Getting warmer



Die hard bicyclists test their skills against the Dalton Highway's steep mountain passes and gravel roads. Margaret Kriz Hobson/E&E News

When oil first started flowing through the Alaska pipeline, the entire Dalton Highway was off-limits to the public. Anyone wanting to drive down the road had to secure a permit from the industry-owned Alyeska Pipeline Co., which runs TAPS.

Over the years, the state of Alaska took over the highway. But it wasn't until 1994 that the road was opened to the public. Now truckers traveling across the vast Alaska landscape regularly wave to a steady stream of campers, tourists and hunters.

Hunting is a way of life in Alaska, and, in season, bow hunting is allowed along the Dalton Highway. Firearm hunting, however, is not permitted within 5 miles on either side of the road.

No one comes to Deadhorse by mistake. Most tourists simply want to find out what's at the end of America's northernmost road.

As we stopped in Deadhorse this summer, we met a string of curious visitors from all over the world. Dave Kawa and his wife drove almost 5,000 miles from Janesville, Wis., in his 1978 Ford Pinto cruising wagon with the words "Destination Deadhorse" written on the rear window.

Deadhorse attracted motorcyclists from Colombia and Fairbanks residents taking guests on the ultimate insider's tour of the state.



Dave Kawa drove from Wisconsin to Deadhorse in his 1978 Ford Pinto cruising wagon. Margaret Kriz Hobson/E&E News

We also passed die-hard bicyclists determined to test their skills against the Dalton Highway's steep mountain passes and unforgiving stretches of gravel.

And we encountered extensive road construction on the North Slope. Over the last two years, the Alaska Department of Transportation has been replacing sections of highway that were washed away in 2015 when the Sagavanirktok River, known as the Sag, overflowed its banks.

In some spots, the road crews were elevating the highway more than 10 feet above Alaska's wet tundra, insulating the new road with Styrofoam-like panels before covering it with gravel and a paving material called "chip seal."

As we drove south from Deadhorse, the vast, open lands were dotted with small caribou herds grazing on the tundra and a line of musk oxen lumbering along under the Alaska pipeline.

By the time we arrived at the Toolik Field Station, 130 miles south of Deadhorse, the weather had warmed to a balmy 70 degrees. Yellow and white wildflowers bloomed across the fields, with fuchsia-colored fireweed edging the road.

Work camps transformed



At the Toolik Field Station, the University of Alaska, Fairbanks, provides housing and services for a broad array of scientists. Margaret Kriz Hobson/E&E News

Before Alyeska began building the Dalton Highway and the TAPS pipeline, the industry-owned company set up a string of work camps along the planned pipeline route to provide housing for thousands of employees. Once the projects were completed, most of the camp sites were abandoned and dismantled.

But remnants of several work camps can still be found along the highway. The Coldfoot Camp was converted into a hotel. The Galbraith Lake site is currently being used as a campground. The Happy Valley Camp's landing strip now provides access to charter planes transporting hunters to the region.

Meanwhile, the former Toolik work camp, 40 miles north of the Brooks Range, has become a world-renowned research field station for the University of Alaska, Fairbanks.

The scientific research site, Toolik Field Station, first took shape in 1975, when the university's Institute of Marine Science brought a 16-foot travel trailer to the Toolik work camp runway. A year later, the institute added a 10-foot-by-50-foot modular unit left over after construction of a Canadian gasline project.



Mike Abels. Margaret Kriz Hobson/E&E News

In those early days, Toolik scientists were required to provide their own tents and operated under a "what you bring is what you get" philosophy, according to field station operations manager Mike Abels. As the camp slowly expanded, the research site was moved closer to Toolik Lake.

When Alyeska began closing down its pipeline work camps, Abels took to the highway in search of useful equipment. Eventually more than a dozen Alyeska metal housing trailers were appropriated for the Arctic research center. The field station also received a variety of auctioned or abandoned surplus equipment — everything from wire, tools, desks, chairs and tires to Jacuzzi tubs from the pipeline camps' first-aid rooms.

"It was like a hardware store on-site," said Abels, a dark-haired, mustachioed administrator with a deep knowledge of the research station operations. "We told people to go to the resource pile and use this stuff. That's how they got equipment for their research."

Today the Toolik Field Station has evolved from a summer-only tent camp into a modern year-round Arctic research facility. The station, which is not open to the general public, can provide housing, meals and laboratory facilities for up to 100 scientists and students.

As electronic and communications capabilities at the camp grew, Toolik's research potential expanded. Now scientists at the site study everything from Arctic terrestrial and aquatic ecosystems to geophysical research on Alaska's northern lights and seismic changes.

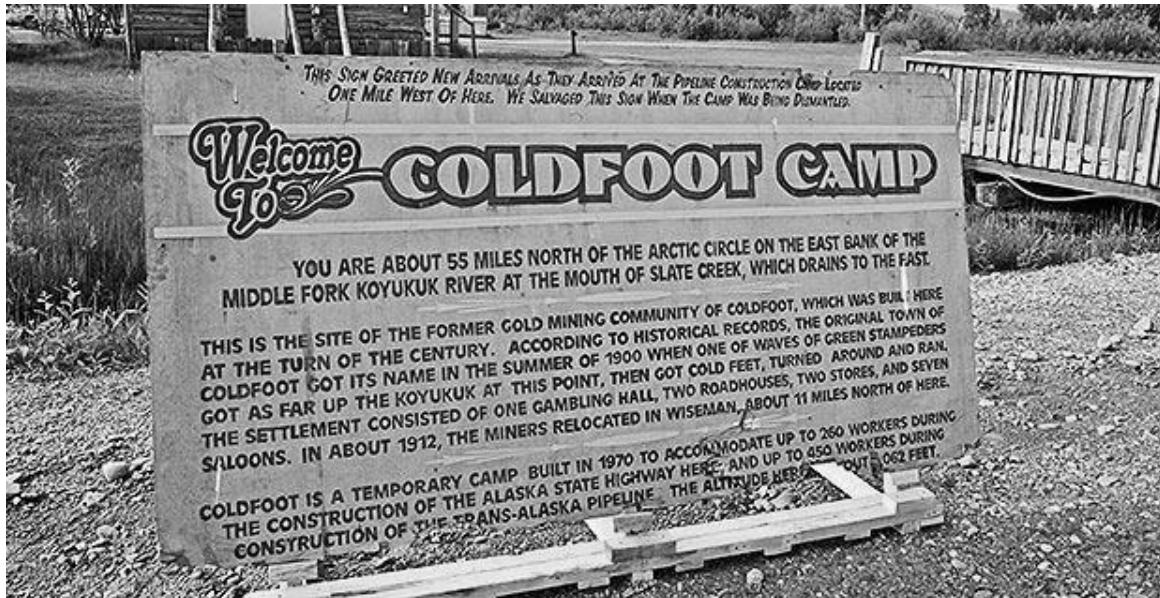
"We have researchers doing everything — all the way up into the atmosphere to all the way down into the ground, and everything in between," Abels observed.

Toolik Field Station's heavy summer research season was just beginning during our June visit to the site. As a result, we were allowed to rent a room for the night. The bathrooms were down the hall.

Before we arrived, however, we were required to complete the Toolik Field Station Sexual Misconduct and Title IX Training course and pass a test. Once on-site, we were requested to limit our water usage by taking a maximum of two showers per week and then to keep the water running no longer than two minutes.

Showerless, we left Toolik the next morning and headed south on our way to the Brooks Range.

Pass carefully and watch for wolves



Coldfoot Camp is the only hotel between Deadhorse and Fairbanks. Margaret Kriz Hobson/E&E News

The only way to reach Fairbanks from the North Slope is to drive south up the long, steep, winding road through Atigun Pass, the highest point on the Dalton Highway. Carved into the Brooks Range mountains, the road climbs to an elevation of 4,739 feet.

Guide books tell visitors to watch out for Dall sheep and wolves on the rocky hillsides along Atigun Pass. But we were more focused on the soaring, midnight-blue mountains accented with lingering streaks of snow, as well as the string of trucks that lumbered up the treacherous incline.

After crossing the continental divide, the highway descends into a scenic green valley surrounded by low mountains, a region known as the Chandalar Shelf. There the road follows the sparkling, braided Dietrich River and eventually reaches Alaska's boreal forestlands.

South of the Brooks Range, our first stop is the tiny mining community of Wiseman, one of the few permanent settlements located between Deadhorse and Livengood. The historic village, located on the Koyukuk River, was established in 1907, when miners struck gold in a nearby creek.

The most-photographed spot in town is an abandoned log cabin, once used as a post office, that is slowly sinking into ground as the permafrost beneath it melts and refreezes each year. Today only a handful of people remain in town year-round, some of whom are still working gold mining claims.

Just south of Wiseman lies the former Alyeska work camp of Coldfoot, a truck stop, hotel and post office that's conveniently located about halfway between Fairbanks and Deadhorse.

Coldfoot was first settled in the late 1890s when thousands of gold prospectors flooded the area. But a few years later, the bustling community became a ghost town when a bigger gold find was discovered up the road near Wiseman.

In the 1970s, Coldfoot was reborn when Alyeska housed hundreds of pipeline construction workers at the site. After work on TAPS ended, Alaska dog musher Dick Mackey bought a food concession permit for the site and set up a kitchen in an old school bus.

Soon he was selling hamburgers to truck drivers who traveled the Dalton Highway. Some truckers helped Mackey build a larger restaurant. Today the site is owned by a Fairbanks-based tour company.

As the pipeline was completed, the Coldfoot Camp's metal trailer housing units were converted into a hotel. And that's where we stayed as we traveled down the Dalton Highway.

The place still retains its rustic 1970s work-camp atmosphere. The hotel has a stuffy communal TV room near the entrance. And the smell of diesel heating oil permeates the bedrooms and hallways.

But unlike in the pipeline construction days, guests are no longer required to share a toilet with a hallway full of workers. Today the narrow bedroom units have been retrofitted with their own bathrooms, created when the owners walled off a corner of the room with rough, unpainted press board.

Bridging the Yukon



At the Yukon River, the pipeline is attached to the side of the bridge. Margaret Kriz Hobson/E&E News

After spending our last night on the Dalton Highway at Coldfoot, we stopped across the highway at the federal Arctic Interagency Visitor Center. That site, operated jointly by BLM, the Fish and Wildlife Service and the National Park Service, provides information on off-road trips along the Dalton Highway.

Sixty miles later, we stopped at a pullout marking the Arctic Circle, which is technically the latitude at which the sun does not set on the summer solstice and does not rise on the winter solstice.

There, a woman dressed in yoga clothes was having her picture taken while striking a series of dramatic poses in front of the wooden Arctic Circle signpost.

At lunch, we stopped at the Hotspot Cafe, a restaurant that consists of a food truck with a covered outdoor eating area. On this warm sunny afternoon, the proprietor was burning bright green coils that emitted insect repellent to ward off swarms of mosquitoes.

The cafe is known for its ample servings and its flower garden. During construction of the Dalton Highway, archaeologists also discovered mammoth remains near the restaurant. However, the bones were quickly carted away from the site.

A few miles past the Hotspot, we reached the Yukon River Bridge, a half-mile-wide span that was built by Alyeska and the state of Alaska after the Dalton Highway was completed.

Until the bridge was finished, all traffic to the North Slope had to be ferried across the river. Once the river freezes in the winter, travelers could cross on ice roads. Today the bridge remains the only crossing over the Yukon in Alaska.

After crossing the Yukon River, the highway twists and turns through a series of impressive hillsides and valleys, sometimes in tandem with the Alaska pipeline and sometimes just out of sight.

My husband and I spent an amazing week driving 414 miles up the Dalton Highway to Deadhorse and then back down again. We had originally intended to camp somewhere along the way. But we scrapped those plans after encountering Alaska's abundant populations of gnats, black flies and mosquitoes.

We both agreed that, this time at least, it made more sense to stay in a diesel-scented room at Coldfoot than to endure a long night fighting Alaska's famously voracious mosquitoes.

But next time ...

<http://bit.ly/2woIFJj>

10. Trump stokes fears of government shutdown

Geof Koss, E&E News reporter

Published: Wednesday, August 23, 2017

President Trump's stated willingness to shut down the federal government over funding for his border wall with Mexico is adding a new layer of pressure on lawmakers, who already face a tangle of difficult budget and spending deadlines when they return to the Capitol next month.

Speaking at a campaign-style rally in Phoenix last night, Trump repeated his vow to build a wall along the U.S.-Mexico border, which he called "absolutely necessary" to protect the American people.

"Build that wall," Trump said, echoing the crowd's chant. "Now the obstructionist Democrats would like us not to do it. But believe me, if we have to close down our government, we're building that wall."

Senate Minority Leader Chuck Schumer (D-N.Y.) said today that it will be Trump's fault if the government shuts down at the end of the fiscal year Sept. 30.

"If the President pursues this path, against the wishes of both Republicans and Democrats, as well as the majority of the American people, he will be heading towards a government shutdown which nobody will like and which won't accomplish anything," Schumer said in a statement.

In Phoenix, Trump argued that his election signaled approval from the American public for the wall, which he said the Border Patrol argued was "so vital" during a visit to a border facility in Yuma, Ariz.

"I said to them, 'How are we doing, and how important are the walls?'" Trump said of his visit with border agents. "And they said, 'Mr. President, you have no idea. It is desperately needed.' We're going to have our wall. We're going to get our wall."

Building a border wall was a central pledge of Trump's campaign, during which he repeatedly vowed that he would force Mexico to pay for its construction. While Republicans were cool to the idea, GOP lawmakers have begun to come around to the wall, which is seen as a concession they need to make to Trump in exchange for their own priorities.

A four-bill "mini-bus" spending package passed by the House last month includes \$1.6 billion for the wall, despite the objections of Democrats (*E&E Daily*, July 28).

Senate Democrats, meanwhile, have drawn a line in the sand over funding the border wall. Last night, Trump again repeated his call for ending the Senate filibuster, which he said empowers the Democratic minority.

Majority Leader Mitch McConnell (R-Ky.), whose relationship with the president has frayed in recent weeks, has repeatedly dismissed Trump's call for changing the chamber's filibuster rules.

The president last night framed the wall as a national security issue.

"Let me be very clear to Democrats in Congress who oppose a border wall and stand in the way of border security: You are putting all of America's safety at risk. You're doing that," he said.

Rep. Nita Lowey (D-N.Y.), the ranking member on the House Appropriations Committee, slammed Trump's shutdown threat as "the polar opposite of leadership."

"Wasting tens of billions of dollars on a useless and immoral border wall is a nonstarter for Democrats, particularly at a time of such real need in our communities," Lowey said in a statement.

But Rep. Mark Sanford (R-S.C.), who at times has been an outspoken Trump critic, acknowledged that Republicans are feeling political pressure to fund the border wall.

In an appearance on CNN, Sanford said the timing of Trump's Phoenix rally was less than ideal, given its close proximity to the racial turmoil unleashed this month by violence in Charlottesville, Va.

"But in fairness, you know, there's been a long-standing promise he made with regard to immigration policy, in particular securing the border," Sanford said yesterday. "I think that a lot of Republicans, a lot of conservatives would like to see a more secure border."

Ahead of Trump's rally, the Sierra Club slammed Trump's "racism and misguided views on border security," noting that the Department of Homeland Security plans to waive a host of environmental laws to expedite construction of barriers along the border (*Greenwire*, Aug. 1).

"Instead of solving problems along the border, walls just exacerbate flooding, destroy wildlife habitat, and fragment wildlife migration corridors," said Dan Millis, borderlands program coordinator for the Sierra Club, in a statement.

Trump also struck a pessimistic tone on another key campaign pledge affecting U.S. relations with Mexico: the renegotiation of the North American Free Trade Agreement, which formally kicked off last week in Washington.

"I told you from the first day, we will renegotiate NAFTA or we will terminate NAFTA," Trump said in Phoenix last night. "I personally don't think you can make a deal without a termination, but we're going to see what happens."

<http://bit.ly/2wyNf8p>

11. Government again fails to win convictions

Jennifer Yachnin, E&E News reporter

Published: Wednesday, August 23, 2017

Federal prosecutors yesterday suffered another stunning setback in their attempts to convict participants in the armed standoff between ranchers and federal agents near Bunkerville, Nev., when jurors failed to return a single guilty verdict in the retrial of four men who took part in the 2014 event.

The decision is the latest in a string of failures for federal prosecutors, who have not secured significant convictions for participants in either the Bunkerville standoff or the 2016 occupation of the Malheur National Wildlife Refuge in Oregon.

The newest verdict marked the conclusion of the government's second attempt to convict Bunkerville participants Richard Lovelien, Scott Drexler, Eric Parker and Steven Stewart.

The four men faced a retrial after jurors deadlocked over charges against them in an April trial (*E&E News PM*, April 24).

In a six-week retrial, prosecutors presented social media postings from the defendants, as well as photos and videos of the standoff and showcased the defendant's firearms. Jurors deliberated for four days before returning not guilty verdicts on all 10 charges against Lovelien and Stewart, as well as on six of 10 charges against Parker and eight of 10 charges against Drexler.

The jury deadlocked on the remaining charges against Parker and Drexler, and acting U.S. Attorney Steven Myhre said in a statement that prosecutors have not determined whether to seek a third trial on those charges.

"While we are disappointed with the verdicts, we thank the jurors for their service," Myhre said. "At this time, the government has not announced its decision regarding the retrial of Eric Parker and O. Scott Drexler."

Local media reports indicate dozens of Bunkerville supporters cheered the jury's verdict yesterday.

"What we have here is a win," said Andrea Parker, Eric Parker's wife, who has monitored the trial and issued daily video updates, following the ruling, according to the *Las Vegas Review Journal*.

Federal prosecutors had attempted a new strategy in the second trial, in which they tied the defendants' actions to other protests of government management of public lands, including events at the Sugar Pine mine in Josephine County, Ore., in April 2015 and the White Hope mine near Lincoln, Mont., in August 2015 (*Greenwire*, July 10).

The defendants were accused in part of conspiring with rancher Cliven Bundy and his sons "to threaten, and use, force and violence to interfere with the officers" from the Bureau of Land Management who attempted to seize rancher Bundy's cattle over more than \$1 million in unpaid grazing fees.

But the jury appeared to reject those arguments, according to defense attorneys who spoke with individuals following the verdict. The *Las Vegas Review Journal* reported that the attorneys said jurors indicated they had voted 11-1 in favor of acquittal on all charges against the defendants.

In the first Bunkerville trial, jurors did convict two defendants: Arizona resident Gregory Burleson and Idaho resident Todd Engle. But jurors remained undecided on a number of counts against Burleson and Engle, including charges of conspiracy, and prosecutors decided not to retry them on those counts.

Last month, U.S. District Court Judge Gloria Navarro sentenced Burleson — who was found guilty of threatening a federal officer, obstruction of justice and interstate travel to help extortion — to 68 years in prison. Engle will be sentenced in September and faces up to 20 years in prison (*Greenwire*, July 27).

Charges against participants in the Bunkerville incident were divided into three separate trials, with Cliven Bundy and his sons Ammon, Melvin and David slated to face trial 30 days after conclusion of the retrial. A third trial for minor participants in the standoff will take place following the Bundy trial.

Restitution for Malheur

The ruling marks another setback for federal prosecutors, who have failed to secure a major conviction against the Bundys or their supporters in trials to date.

In late 2016, a federal jury in Oregon refused to convict seven defendants in the Malheur occupation, including the event's leaders, Ammon and Ryan Bundy (*Greenwire*, Oct. 28 2016). A federal judge later found four defendants guilty of a variety of misdemeanor charges in the case, including trespassing (*Greenwire*, March 22).

Oregon Public Broadcasting reported yesterday that the 13 defendants in that incident who either pleaded guilty or were found guilty on related charges will pay \$78,000 in restitution.

The government had initially asked those defendants to pay \$920,914, a fraction of the \$6 million that the Interior Department estimated it spent in response to the occupation and \$12 million that law enforcement spent, OPB reported.

"We think it's a reasonable settlement," defense attorney Andrew Kohlmetz told OPB. "It's the product of a very involved negotiations by both sides."

<http://bit.ly/2wFOAJF>

12. Roosevelt IV says Zinke hasn't lived up to Teddy's legacy

Jennifer Yachnin, E&E News reporter

Published: Wednesday, August 23, 2017

Interior Secretary Ryan Zinke regularly touts his admiration of Theodore Roosevelt, but the conservationist president's great-grandson yesterday said Zinke's actions have failed to match his rhetoric.

In an op-ed published in the *Houston Chronicle*, Theodore Roosevelt IV, a lifelong Republican, chided President Trump's late April order mandating a review of all national monuments created since 1996 that encompass more than 100,000 acres.

Roosevelt called the assessment of 27 monuments "part of a concerted, unwarranted and unprecedented attack on lands that belong to all Americans." Zinke has so far said six of the sites will be spared any reductions in acreage ahead of his final report due tomorrow.



Theodore Roosevelt IV. Landstander182/Wikimedia Commons

"Secretary of the Interior Ryan Zinke has both administrative power and a bully pulpit to encourage sound policy for a huge portion of our nation's public lands. He often professes his commitment to public land conservation, and he frequently evokes the legacy of TR. But his conservation actions have failed to match his rhetoric, so far," wrote Roosevelt, an investment banker.

In particular, Roosevelt slammed Zinke for supporting the administration's push to open more federal lands to energy extraction, noting that the approach stands in stark contrast to his great-grandfather's own priorities.

"His passion for the great outdoors propelled his actions to protect wild places," Roosevelt wrote of the former president. "But his love for the land was combined with a fierce determination to take on profiteers who were seeking to exploit public lands for private gains. He set a high bar for stewardship of America's treasures."

President Theodore Roosevelt signed and was the first president to use the Antiquities Act of 1906, ultimately establishing 15 national monuments that encompassed more than 1.5 million acres of land, including the Grand Canyon.

The Antiquities Act was created in part to deter "pot-hunters" who were looting archaeological sites in the early 1900s. But President Roosevelt is credited with taking a more expansive view of the law — which allows presidents to set aside areas of cultural, scientific or historic significance — that set the standard for subsequent monuments (*Greenwire*, Aug. 11).

In yesterday's op-ed, Theodore Roosevelt IV questioned the Trump administration's assertion that its review was needed to remedy a lack of public input on the sites created since 1996, writing that "this current review process is a solution in search of a problem."

He added that Zinke "must know that before these monuments were designated, virtually all of them were subjected to arduous, comprehensive assessments to ensure that each place deserves protection for its natural, historical or cultural significance."

Roosevelt also criticized Zinke for recommending significant reductions to the 1.35-million-acre Bears Ears National Monument in Utah. The site, which has drawn the ire of Republican lawmakers who failed to pass legislation known as the "Utah Public Lands Initiative" to define the area, was the focus of an interim report in June.

Zinke has yet to issue recommendations on specific cuts to the site. But he's said the site should follow the law and protect only the "smallest area compatible" with preserving antiquities.

"Despite his declared love of our outdoor heritage, he recently recommended reducing the acreage of the Bears Ears National Monument in Utah, a spectacularly beautiful place that is sacred to five tribal nations with ancestral ties to that land," Roosevelt wrote. "He still has time to correct this recommendation before his final report is due by Thursday."

In the op-ed, Roosevelt also disparaged the Trump administration's proposed 84 percent cut to the Land and Water Conservation Fund, as well as Zinke's support for oil exploration in the Arctic National Wildlife Refuge and his having "greased the skids for more oil drilling on federal lands."

Roosevelt said that he's spoken with Zinke several times and that they share a love of "our country's natural heritage" and military service. "I believe he would like to honor the promises he has made to protect the nation's natural wonders," he wrote.

"To be a faithful steward of our public lands during the Trump administration will require courage and discipline, attributes that Secretary Zinke values," Roosevelt added. "If he aspires to live up to the Roosevelt legacy, he will need to stand up to special interests and protect America's public lands."

During a visit to the Rocky Mountain National Park in Colorado last month, Zinke once again reiterated his admiration of President Roosevelt while also comparing himself to the first head of the Forest Service, Gifford Pinchot.

"I tend to move to the Pinchot side rather than Muir," Zinke said, referring to environmentalist John Muir, who founded the Sierra Club. "And people forget that while Roosevelt visited Muir, he hired Pinchot" (*Greenwire*, July 24).

Pinchot was known for his pursuit of sustainable use on public lands, while Muir advocated to maintain wilderness in an unspoiled state.

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13. Timber plan reignites battle over spotted owl

Michael Doyle, E&E News reporter

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California's loggers and environmentalists will again face off over northern spotted owl protections, as timber giant Sierra Pacific Industries tries to craft a plan that would allow intrusions on the federally protected bird's forest habitat.

There's tricky terrain ahead, starting today.

The owner of 1.6 million acres in California, Sierra Pacific Industries is preparing a habitat conservation plan covering future timber harvest and management. If approved, the plan would include the Fish and Wildlife Service's permission for "incidental take" of the owl.

The northern spotted owl habitat conservation plan, though its contours remain unclear, could become one of the largest of its kind in the country.

But industry and government officials alike also know that in the 27 years since the northern spotted owl was listed as threatened under the Endangered Species Act, few things have come easily (*Greenwire*, June 30). "Implementation of the proposed [plan] may have significant impacts on the human environment and, because it involves spotted owls and timber harvest, is likely to be controversial," Fish and Wildlife Service officials acknowledged in a *Federal Register* notice today.

Kim Turner, the Fish and Wildlife Service's project lead, said today that the agency hopes to finalize plans by the end of 2018, which she described as an "aggressive" time frame.

"This is a high priority, for SPI and the service," Turner said.

The Fish and Wildlife Service's two-page notice revealed that the agency is preparing an environmental impact statement on Sierra Pacific Industries' application for an incidental take permit covering the northern spotted owl and the California spotted owl.

Unlike the northern spotted owl, the California spotted owl is not listed under the federal Endangered Species Act, though it is the subject of an ESA petition.

"Both species are subject to injury or mortality during timber harvest operations and management activities," Fish and Wildlife noted today.

Underscoring the potential geographic reach of any spotted owl decision, the agency has set a Sept. 13 public hearing in Redding, Calif., and a Sept. 14 hearing 160 miles away in Sacramento.

Andrea Howell, Sierra Pacific Industries' director of corporate affairs, said today that the upcoming hearings were a "key step" in the process that will be unfolding, which she said will help the company's plans for protecting the landscape.

"The challenge for any habitat conservation plan is whether there will be adequate protections for the species," John Buckley, executive director of the Central Sierra Environmental Resource Center, said today, adding that "the spotted owl faces numerous challenges."

Based in Anderson, Calif., Sierra Pacific Industries is the state's largest private landowner and describes itself both as "family owned" and as "among the largest lumber producers in the United States." There's significant potential for conflict with the northern spotted owl, whose federally designated critical habitat includes more than 900,000 acres in California.

Taking of a protected species may entail, in brief, either its direct killing or the destruction of its habitat. An "incidental" take occurs when the harm is not the purpose of the individual carrying out an otherwise lawful activity; under the right circumstances, this might include logging.

Habitat conservation plans describe the anticipated impacts of the proposed species taking, how these will be minimized or mitigated and how the plan itself will be funded. The plans might be built to last 50 years or more, providing long-term certainty.

Nationwide, hundreds of such plans have been put in place. In California, for instance, the Fish and Wildlife Service's database shows habitat conservation plans range from a 25.5-acre plan covering a Chevron pipeline in Kern County to a 53,242-acre plan for the Sacramento area's Natomas Basin.

In a grimmer vein, there's also a habitat conservation plan covering the California Department of Corrections and Rehabilitation's construction of electrified fences at 26 prisons statewide.

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